



PATENT
P56341

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Kenneth Buck ALBRITTON

Serial No.: 09/995,615

Examiner: MAI, TRI M.

Filed: 29 November 2001

Art Unit: 3727

For: PORTABLE LOCKER BACKPACK (*as amended*)

TRANSMITTAL OF APPELLANT'S BRIEF FEE

Mail Stop: Appeal Brief-Patents

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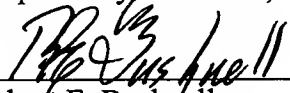
Alexandria, VA 22313-1450

Sir:

Accompanying this transmittal is a check drawn to the Commissioner of Patents and Trademarks in the total amount of \$760.00 (Small Entity) for filing an Appeal Brief (\$250.00) in support of a Notice of Appeal filed on 13 June 2005, together with a Petition for Three-month Extension of Time (\$510.00) which extends the period for filing the Appeal Brief to and through 14 November 2005 (13 November 2005 being Sunday).

Should any additional fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 in that amount. Please inform the Applicant of any transactions involving the Deposit Account.

Respectfully submitted,


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Folio: P56341
Date: 14 November 2005
I.D.: REB/sb



PATENT
P56341

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES**

In re Application of:

Kenneth Buck ALBRITTON

Appeal No. _____

Serial No.: 09/995,615

Examiner: MAI, TRI M.

Filed: 29 November 2001

Art Unit: 3727

For: PORTABLE LOCKER BACKPACK (*as amended*)

Attn: Board of Patent Appeals & Interferences

APPEAL BRIEF

Mail Stop: Appeal Brief - Patents

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the appellant's Notice of Appeal filed on 13 June 2005, the appellant hereby appeals to the Board of Patent Appeals and Interferences from the final rejections of claims 24-27, 32, 34, 35 and 37-55 as set forth in the final Office action (Paper No. 20050207) mailed on 11 February 2005. The Appeal Brief is being submitted in triplicate.

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Folio: P56341
Date: 11/14/05
I.D.: REB/SS/sb

I. REAL PARTY IN INTEREST

Pursuant to 37 CFR §41.37(c)(1)(as amended), the real party in interest is:

Kenneth Buck ALBRITTON
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Ashland, VA 23005 United States

the sole inventor of the subject matter defined by the pending claims.

II. RELATED APPEALS AND INTERFERENCES

There is no other appeal or interference known to the appellant, appellant's legal representatives, or assignee, which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 24-27, 32, 34, 35 and 37-55 are pending in this application. Claims 1-23, 28-31, 33 and 36 were previously cancelled. All of the pending claims 24-27, 32, 34, 35 and 37-55 stand finally rejected as stated in the final Office action (Paper No. 20050207) mailed on 11 February 2005.

Appellant here appeals from the final rejection of claims 24-27, 32, 34, 35 and 37-55.

IV. STATUS OF AMENDMENTS

No Amendment was filed after the final Office action (Paper No. 20050207) mailed on 11 February 2005.,

V. SUMMARY OF CLAIMED SUBJECT MATTER

In conformance with 37 C.F.R. §41.37(c)(1)(v), a backpack 710, as seen in Fig. 8 has a hook 712 that is shaped to hang on top of a door. The hook 712 is attached to a strap 713 that allows the bag to rest on the floor, thereby reducing the weight on the hanging structure. A clasp 714 are attached on the pockets 770 to help secure items inside. The clasp 714 can be substituted with velcro or other similar means. Elastic is sewn into the strap 716 to keep the strap 716 at the top of each compartment straight and assist in securing the items in the compartments. Smaller items are stored in the middle compartments 718 and are structured to allow the top to fold down smoothly. Side handles 720 are sewn into the side walls 724 to accommodate additional carrying options. A mesh wall 722 is used to hold any smaller items in the bottom and the wall 722 assists in holding the sides together.¹

As seen in Fig. 10, the backpack 710 is in a closed position. The backpack 710 has a top mesh pocket 732 and a bottom mesh pocket 730. Each of the pockets has only a portion that is made of mesh material and the remaining portion of the pockets being of solid material that is not see-through. Solid material that is not see-through is a material that one cannot see through with an unaided eye. The mesh materials 730 and 732 accommodate a ventilation of the pockets. The bottom pocket with the mesh material 730 can have door zippers 740. I-rings are attached to the front portion of the closed backpack to allow for attachments such as bungee cord to attach

¹Original Specification, paragraph 59, page 16, line 16 -page 17, line 3.

additional items such as camping equipment or snowboards. An adjustable strap 734 is transversely disposed near the middle section of the front portion of the closed backpack 710. The adjustable strap 734 can secure bulky items such as butt-pads for ice hockey. The butt-pads for instance can hook to the outside with the adjustable clasp 736. The adjustable strap 734 allows for the size of the backpack 710 to be not excessively large since the adjustable strap can take care of extremely bulky equipment. Since, the backpack 710 can be carried on the back of a user, an excessively large bag may not be desirable. A handle 728 is attached to the top portion of the backpack 720 allowing further flexibility for a user to carry the backpack 710. The backpack 710 can be closed from an open position as seen in Fig. 8 to the closed position as seen in Fig. 10 with a zipper 738 or other fastening means. The side walls 724 can be of a solid material that may or may not accommodate ventilation or the side walls can be of a mesh material 725 as seen in Fig. 17 that accommodates a ventilation of the inside of the bag 710 through the side walls. The mesh material 725 being on the side walls (on both sides of the bag) is important because all the inner compartments 770 can be ventilated properly. If both side walls are made of a material that allows ventilation like the mesh material 725, then a cross vent is created to increase the ventilation of the inner compartments (pockets) 770. Furthermore, because the material mesh 725 material is on the side walls, it is not so prone to being worn out as if it was on the front or back side of the bag. The side walls 724 extend from each side of the bottom portion 782 of the back wall 780 of the backpack 710 where the bottom portion 782 of the back wall 780 of the backpack 710 has a greater width than the top portion 784 of the back wall 780 of the backpack 710. The side walls 724 form angles with the extended portion 786 of the bottom back wall 782 of the backpack 710 accommodating a backpack

that closes all sides which then stop any loose items that get out of the compartments 770 from being released from the bag 710.²

Looking at Fig. 11, the backpack 710 (and also on bag 810) can have also a strap 752 secured to the top of the bag 710 that allows for clothes hangers to hang for jerseys or street clothes. A 1 inch webbing 756 under 1 ½ inch webbing is added before stitching. A 1 inch webbing is placed under top clasp before stitching. There must be enough slack allowed for attachment of hangers holding jersey or other clothes. The total webbing length being added appears to be about 6 inches. The 6 inches allows for one inch to be under the top webbing for securement and one inch to be under other clasp strap 758 with four inches exposed allowing for enough slack to hang hangers for jerseys and clothes. A clasp 754 is attached to the clasp strap 752 for hanging the jerseys or street clothes.³

Wheels can also be added to any of the above embodiments allowing a user to cart the bag. The backpacks 210, 610, and 710 may especially have wheels on a bottom portion allowing for a user to cart the backpacks 210, 610, and 710. Referring to Fig. 15, the backpack 910 is the same as backpack 710 except that backpack 910 includes a pair of wheels 920 that allows for the backpack 910 to be transported on the ground by rolling the backpack along the ground or other surface by pulling from the handle 940. The backpack 910 further includes a pair of straps 930 accommodating a user to carry the backpack 910 on his or her back.⁴

²Original Specification, paragraph 61, page 17, line 15-page 19, line 2.

³Original Specification, paragraph 62, page 19, lines 3-11.

⁴Original Specification, paragraph 63, page 19, lines 12-18.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 41, 43, 45, and 46-53 are improperly rejected under 35USC§112, first paragraph, as failing to comply with the written description requirement.

B. Whether claims 41, 45-53 are improperly rejected under 35USC§112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

C. Whether Claims 35, and 37 are improperly rejected under 35 U.S.C. 102(a) as being anticipated by Fournier.

D. Whether Claims 39, 40, and 44 are improperly rejected under 35 U.S.C. 102(b) as being anticipated by Tong (63334519).

E. Whether Claims 24, 25, 26, and 32 are improperly rejected under 35 U.S.C. 103(a) as being unpatentable over Tong (6334519) in view of Fournier.

F. Whether Claim 34 is improperly rejected under 35 U.S.C. 103(a) as being unpatentable over the Tong rejection as set forth above, and further in view of Briggs et al. (4901897).

G. Whether Claim 38 is improperly rejected under 35 U. S. C. 103(a) as being unpatentable over either the Fournier or Tong rejection as set forth above, in view of Davis et al. (2626689).

H. Whether Claims 24-27, 32, 35, 37, and 39-45 are improperly rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (5575362) in view of Wulf et al. (5749503), and

further in view of Bomes et al. (5054589).

I. Whether Claims 24-27, 32, 35, 37, 39-49, 54, and 55 are improperly rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of either Wulf et al. or Yu (6129254), and further in view of Fournier.

J. Whether the rejection of claims 24-27, 32, 34, 35 and 37-48, 54 and 55 under 35USC§103 properly take into account the affidavit of commercial success.

VII. ARGUMENT

A. Rejection of claims 41, 43, 45, and 46-53 under 35USC§112, first paragraph, as failing to comply with the written description requirement.

The CCPA has stated that the description of the invention requirement is “relatively simple to comply and thus will ordinarily demand minimal concern on the part of the Patent Office.”⁵ The Examiner bears the burden of providing a *prima facie* case to support the 35USC§112 rejection. The CCPA has described the written description requirement as “It is not necessary that the application describe the claim limitation exactly..but only so clearly that a person of ordinary skill in the art will recognize from the disclosure that the appellants invented processes including those limitations.”⁶

The Examiner stated that disclosure does not teach the back wall being folded only frontally

⁵*In re Moore*, 439 F.2D 1232, 1235, 169 USPQ 236, 238 (CCPA 1971)

⁶*In re Wertheim*, 191 USPQ at 96 (citing *In re Smythe*, 480 F.2d 1376, 1383, 178 USPQ 279, 284 (CCPA 1973))

forward, and the back wall being separate from other walls.

However, for example, the present invention includes figure 8 which has the bag in the open position with the back wall 780 and figure 10 shows the bag of figure 8 being closed. The closed zipping action of zipper 738 in the closed position shows how the bag can be closed frontally forward.

Moreover, the closing in figure 10 shows that the back wall can be separate from other walls such as side walls 724. Furthermore, paragraphs 59-61 describe the separate description for the back wall 780 and walls such as sidewall 724.

In addition, as mentioned in MPEP §608.04, "In establishing a disclosure, applicant may rely not only on the specification and drawing as filed but also on the original claims if their content justifies it." Therefore, contrary to Examiner's conclusion, the Applicant does provide the written description requirement.

Regarding claim 46, the Examiner states that it is unclear where the back wall being separate from the other walls.

However, as shown above, the back wall can be separate from the other walls.

In claim 43, the Examiner states that claim 35 defines the bottom member as a separate member. However, the Examiner states that in claim 43, the claim recites that the back wall folding the top portion of the back wall to the front edge of a bottom portion of the back wall. Since, the Examiner states, claim 35 defines the bottom member as a separate member the back wall would be

attached to the bottom portion, not the bottom portion of the back wall.

However, claim 43 states *said back wall folding to close said bag by folding the top portion of said back wall to the front edge of a bottom portion of said back wall to couple with said bottom portion formed from a bottom of said backwall*. Therefore, the folding action accommodates the top portion of the back wall to couple with the bottom portion of the backwall and as seen in figure 8 and 10, this is possible.

B. Rejection of claims 41, 45-53 under 35USC§112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner must provide a *prima facie* case of indefiniteness by establishing (a) interpretation for the claim in light of the specification, (b) interpretation of the claim as one of ordinary skill in the art would interpret and (c) that the limitation in the claim, or the subject matter not in the claim does not reasonably define the invention.

The claim language is not looked at in terms of a vacuum, but in light of such elements as (1) the content of the particular application disclosure, (2) the claim interpretation that would be given by one of ordinary skill in the art at the time the invention was made, and (3) the teaching of the prior art. If the scope of the invention sought cannot be determined with a reasonable degree of certainty then a rejection under 112, second paragraph can be made.⁷

⁷In re Wiggins, 488 F.2d 538, 179 USPQ 421, 423-424 (CCPA 1973)

Regarding claim 41, the Examiner stated that "said back wall being folded by the top portion of said backwall being folded" is confusing.

However, the Examiner failed to look at the claim as whole which states that the back wall being folded only frontally downwards, thereby the fold is being frontally downwards.

Regarding claim 46, the Examiner stated that it is unclear how the backwall being separate from the other walls.

However, as shown above, the backwall 780 can be separate from the sidewalls 724 as seen in the figures 8, 10 and related specification. Moreover, the original claims also separately claim the backwall and other walls. Thereby, there is no indefiniteness in the claim.

Moreover, the Examiner's explanation has failed to provide a proper *prima facie* case of indefiniteness as the Examiner only states that such description is confusing to him, as an Examiner and does not relate to one of ordinary skill in the art.

C. Rejection of Claims 35, and 37 under 35 U.S.C. 102(a) as being anticipated by Fournier.

No claim is anticipated under 35 U.S.C. §102 (b) unless all of the elements are found in exactly the same situation and united in the same way in a single prior art reference. As mentioned in the MPEP §2131, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Every element must be literally present, arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 868

F.2d 1226, 9 USPQ2d 1913, 1920 (CAFC 1989). The identical invention must be shown in as complete detail as is contained in the patent claim. *Id.*, "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970), and MPEP 2143.03.

Fournier teaches a back wall 2, left and right wall, a bottom portion attached to a bottom of the back wall 1, a first wall 2 extending from the bottom portion and assisting in holding a sufficient portion of left and right walls together, a plurality of compartments on a front surface of the back wall comprising of netted material, and at least one strap 5 as claimed. The Examiner further stated that the term backpack does not impart any structure over the bag in Fournier. The Examiner further states that Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

However, by using Kilduff, there cannot be a 35USC§102 rejection. As mentioned in the **MPEP §2131**, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Since there is not a single reference, a 35USC102 would be improper.

Although, here there is only 35USC§102 rejection, since the Examiner fails to show any motivation in combining Kilduff and Fournier, which is necessary and therefore, even a 35USC103 would be improper.

Moreover, claim 35 also mentions a first wall extending from said bottom portion and assisting in holding a sufficient portion of said left and right walls together forming a bottom compartment. The first wall of Kilduff fails to disclose the first wall extending from the bottom portion and *assisting* in holding a sufficient portion of said left and right walls *together forming a*

bottom compartment as arranged in the claim. In Kilduff, the first wall does not assist in holding together the left and right walls together to form a bottom compartment. A compartment is only formed when the entire structure is closed.

In MPEP §2131.01 concerning Multiple Reference 35 U.S.C. 102 Rejections, normally, only one reference should be used in making a rejection under 35 U.S.C. 102. However, a 35 U.S.C. 102 rejection over multiple references has been held to be proper when the extra references are cited to:

- (A) Prove the primary reference contains an "enabled disclosure;"
- (B) Explain the meaning of a term used in the primary reference; or
- (C) Show that a characteristic not disclosed in the reference is inherent.

However, neither of the above scenarios presented in MPEP §2131.01 are pertinent in the present rejection as the Examiner is attempting to use two references to anticipate limitations in the present invention.

The Examiner further stated that Kilduff (3686414) teaches the two straps of Fournier can be carried on the shoulder as a backpack. This is not explaining the meaning of the term used in Fournier or to prove that the primary reference is enabled according to portion B and A respectively of 2131.01 of the MPEP. Moreover, such a statement is not showing the characteristic not disclosed in the reference is inherent.

Moreover, it is clear that the Kilduff straps are much longer than the Fournier straps, and thereby necessitating a motivation or suggestion to modify the Fournier straps under a 35USC§103

rather than 35USC§102 as it is not clear that the actual straps of Fournier can accommodate a carrying on the back of the user.

MPEP 2131 refers to MPEP 2112 for a detailed look at inherency, and according to MPEP §2112, “examiner must provide rationale or evidence tending to show inherency” such that “The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’ ” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). Further the CCPA has added that “inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient.” *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981).

Here, the Examiner failed to provide a rationale for needing inherency and furthermore, there is not just a use but a structure involved as the claim states as the claims states, “a pair of shoulder straps disposed a predetermined distance from each other along the longitudinal side of the back surface of said back wall to *accommodate* a carrying of said backpack by the shoulders and the back

of a user". The structure of the pair shoulder straps accommodating a carrying on the shoulders and back of a user is not a feature than be said is inherent. The use of two references in a 35USC§102 rejection is highly problematic.

D. Rejection of Claims 39, 40, and 44 under 35 U.S.C. 102(b) as being anticipated by Tong (63334519).

The Examiner stated that Tong teaches a backside member, a bottom member and straps. The Examiner also stated that Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

Again, as mentioned above, by using Kilduff, there cannot be a 35USC§102 rejection. Since there is not a single reference, a 35USC102 would be improper.

Furthermore, even in a 35USC§103 rejection, which was made in this case, the Examiner fails to show any motivation in combining Kilduff and Tong, which is necessary and therefore, even a 35USC103 is also improper.

Moreover, the present invention includes a zipper while Tong needs multiple zippers as seen in figure 4. A single zipper cannot fully open close the side walls on the left and right side. Therefore, unlike the present invention that can quickly open and close with a single zipper action, two sets of zippers 115 must be used on each side to open fully the bag of Tong. One zipper closes the left side and the other closes the right side of Tong. As mentioned in col. 2, lines 1-5 *each* fold piece has a zipper 115.

Concerning claim 44, the present invention states that said back member selectively connecting and disconnecting said back member to said curved side members and the front of said bottom member by folding said back member frontally downwards toward the bottom member to fasten and close said backpack and unfastening said backpack to unfold said back member upwards to a hanging position. However, looking at Tong or Kilduff, there is no such connection or disconnection of the back member to the curved side members as claimed. For example, such connection would not be possible with the handbag of Tong.

E. Rejection of Claims 24, 25, 26, and 32 under 35 U.S.C. 103(a) as being unpatentable over Tong (6334519) in view of Fournier.

According to MPEP 706.02(j), the following establishes a *prima facie* case of obviousness under 35 U.S.C. §103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The

teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Examiner states that Tong teaches a hook unit 13, back wall, left and right walls 12, a bottom portion 16 attached to a bottom of the back wall 1, a plurality of compartments on a front surface of the back wall, and at least one strap as claimed.

The Examiner also states that Tong meets all claimed limitations except for the netted compartments and Fournier teaches that it is known in the art to provide netted compartments and that it would have been obvious to one of ordinary skill in the art to provide netted compartments in Tong as taught by Fournier to provide venting for the contents and that Kilduff(3686414) teaches that the two straps can be carried on the shoulder as a backpack.

However, concerning claim 24, the claim states that a pair of shoulder straps is disposed a predetermined distance from each other *along the longitudinal side of the back surface* of said back wall to accommodate a carrying of said backpack by the shoulders and the back of a user. However, in Tong the two straps are not along the longitudinal side of the back surface of the backwall but along the lateral side.

In addition, Kilduff is improperly introduced by the Examiner as he does not cite in this rejection and does not provide any motivation or suggestion to combine with Tong and Fournier.

F. Rejection of Claim 34 under 35 U.S.C. 103(a) as being unpatentable over the Tong rejection as set forth above, and further in view of Briggs et al. (4901897).

The Examiner states that Briggs teaches that it is known in the art to provide straps 18, and that it would have been obvious for one of ordinary skill in the art to provide first and second extended portions in either Tong or Franklin as taught by Briggs to keep the contents together.

However, the Examiner has failed to provide a proper suggestion why Biggs should be combined with Tong other than generally keeping contents together. “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability. *In re Dembiczak*, 175 F.3d 994, 50 USPQ.2d 1614 (Fed. Cir. 1999). The showing must be “clear and particular” without broad generalized conclusory statements. *Id.* There must be specific statements showing the scope of the suggestion, teaching, or motivation to combine the prior art references. *Id.* at 1000. There must be an explanation to what specific understanding or technical principle would have suggested the combination of references. *Id.* Respectfully, the motivation given by the examiner of “keeping contents together” , is a broad generalized statement.

G. Rejection of Claim 38 under 35 U.S.C. 103(a) as being unpatentable over either the Fournier or Tong rejection as set forth above, in view of Davis et al. (2626689).

The Examiner stated that Davis teaches that it is known in the art to provide strap 52. It

would have been obvious to one of ordinary skill in the art to provide straps in either Fournier or Tong as taught by Davis to provide a place for hanging garments.

Respectfully, the Examiner must still provide a proper motivation to combine Davis with Fournier or Tong according to MPEP §706.02(j) and therefore, the rejection is defective. Providing a place for hanging garments is not clear and particular and is based on the language of the claim of the present invention. Moreover, the strap accommodating the hanging along a length of the back wall specifically is not taught or suggested. Simply accommodating garments alone does not teach along the length of the back wall specifically.

H. Rejection of Claims 24-27, 32, 35, 37, and 39-45 under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (5575362) in view of Wulf et al. (5749503), and further in view of Bomes et al. (5054589).

The Examiner stated that Franklin teaches a luggage having a foldable back wall with mesh compartments as shown in Fig. 14, and hook 152 that can be attached to an external object, and a front portion as shown in Fig. 14. Franklin meets all claimed limitations except for the straps. The Examiner further states that Wulf teaches that it is known in the art to provide back straps and it would have been obvious to one of ordinary skill in the art to provide back straps in Franklin as taught by Wulf to handle the luggage easily.

The Examiner further states that Bomes teaches that it is known in the art to provide mesh compartments 60 and that it would have been obvious to one of ordinary skill in the art to provide

mesh compartments in Franklin as taught by Bomes to provide the desired venting.

Concerning claims 24, it is seen that the pair of shoulder straps are along the longitudinal side of the backwall, however, as seen in Wulf in figures 3 and 4, the straps are from a backside of a backwall to the side wall. The backstraps or shoulder straps are never on a single wall.

Moreover, reference 152 is not a hook but a hooked flange not for hanging back wall to object. As mentioned in Col 12 line 53-67 slot 150 hooked flange col 13 line 1-5 securely but releaseably engaged to slot 150 on grip 60. The hooked flange is engaged to the slot when the handle fully extended for locking in handle with tripod so that it does not fall down. As seen in the figures 15 and 13, if that flange use to hang to an object other than the bag's handle itself, then there would be a problem with handle bar as the extensions would be in the way and flange is only usable if there is a similar socket for the flange in the object. The Examiner states that any kind of hook structure make it obvious, however, as mentioned in MPEP §706.02(j) there must be a reasonable expectation of success and it is not clear that such a flange would have reasonable expectation of success.

Moreover, in claim 35, it states, "said compartments disposed from a top portion of the front surface of said back wall to a bottom portion of said back wall". Clearly as seen in figure 14 of Franklin, the compartments are not disposed *from a top portion to the bottom portion*. The examiner points to two portions at the top area, but, first, there is no teaching or suggestion that these are actually compartments or some other structure. Moreover, reference 94 is the back, 118 is the front flap and 116 is the top panel only. Therefore, there are no compartments from the top to bottom portion of the backwall. In addition Wulf or Bomes also do not show such a feature.

I. Rejection of Claims 24-27, 32, 35, 37, 39-49, 54, and 55 under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of either Wulf et al. or Yu (6129254), and further in view of Fournier.

The Examiner's only reason of rejection under this combination was that it would have been obvious to one of ordinary skill in the art to provide a plurality of netted compartments covering the front portion of the back wall to accommodate a plurality of objects, and regarding claim 49, the tabs 25 in Fournier are the straps as claimed.

First, the Examiner has failed to provide a *prima facie* of obviousness for all the limitations of claims 24-27, 32, 35, 37, 39-49, 54, and 55 as the Examiner only discusses the features of better compartments and the straps. As mentioned in MPEP §706.02(j), the prior art reference (or references when combined) must teach or suggest all the claim limitations and here it is clear that the Examiner has failed to provide how the references teach all the claim limitations.

Moreover, the Examiner failed to provide any motivation to combine the references.

In addition, the tabs 25 of Fournier as seen in figure 3 cannot be the pair of straps disposed on the back surface to accommodate transport of the backpack on a back of a user. This rejection, is clearly incomplete and lacking in providing the Examiner's burden of a *prima facie* case.

J. The rejection of claims 24-27, 32, 34, 35 and 37-48, 54 and 55 under 35USC§103 with regard to the affidavit of commercial success.

With respect to the inventor's declaration that the invention entails commercial success, the Examiner stated that it is noted that there is no comparison between the invention with the applied reference to compare to. Furthermore, the Examiner stated that it is noted that the inventor's declaration that the invention entails commercial success is not sufficient to overcome a rejection under 35USC102.

As shown below, to show commercial success, a nexus between the success of the claimed invention . In order for a nexus to be shown, certain factors have been enumerated by the courts which is satisfied by the affidavits to commercial success.

The courts have mentioned that one does not have to prove that other factors were the reason. There is too much burden as the court cites.

However, increased marketshare is said to be proper evidence and the continued increase of commercial success over time. As seen in the affidavit, market share has increased.

The courts as shown below have also cited the commercial success through interest generated through licensing agreements.

Also as mentioned in the *Pro mold* case⁸, the patent owner's lack of previous experience in the relevant work and combined with high sales gives the inference of a nexus alone. Here, the sales have increased and also the present inventor is not experienced in the relevant work.

Moreover, it was shown by the courts that industry recognition or award probative of non-

⁸*Pro-Mold & Toll CO. V. Great Lakes, Inc.*, 75 F.3d 1568, 37 USPQ2d 1626 (Fed Cir. 1996)

obviousness connected between award and claimed subject matter is probative of commercial success. The Award by the United Inventor's association sponsored by Proctor and Gamble cites the presently claimed invention and also some of the features in their comments. Dr. Forrest Bird, one of the judges and the National Inventors Hall of Fame inductee and inventor of the respirator stated that its usefulness could potentially extend into the medical industry as "This product is perfect to neatly pack different sized equipment and be able to access it quickly." Therefore, even the experts believe that the present invention deserves recognition.

The Richmond Times-Dispatch in an article also stated that about 150 stores nationwide including A&N stores and Reliance Marine carry the present backpack under the trademarked name GEARMAX.

In the Innovations-Fitness section, cites the claimed invention through the photograph of the claimed invention citing all its different features including the point that the system makes it fast to find what you need while wet items dry in the mesh pockets when stored and the backpack design allows your hands to be free.

The presently claimed invention was also featured as a success story in the Inventor's digest in November/December 2003 with a picture of the claimed invention showing that it is the claimed invention that is being cited. The article stated that the pack which looks like a backpack when its closed but when unzipped becomes a "virtual" locker and ventilation system.

The *In re Huang* case cited below, also stated that affidavits from purchaser explaining that product was purchased due to claimed features is also probative in a finding of commercial success.

As mentioned in the current MPEP version 8 (revision 2, May 2004) and as described in the analysis below, by *Patent Prosecution* by Irah H. Donner, BNA books, second edition 1999, pages 561-568, an applicant may also use affidavit evidence to present commercial success or unexpected benefits of the claimed invention.

As indicated by the court, evidence of secondary considerations, when it exists, is always to be considered, and not merely when the Examiner remains in doubt after reviewing the prior art. *Cable Elec. Prods., Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881, 887 (Fed. Cir. 1985). Therefore, the Examiner must look at in all instances of 35 USC § 103 rejection and not only if its in doubt.

The Federal Circuit has summarized these requirements for presenting commercial success as follows:

When a patentee asserts that commercial success supports its contention of nonobviousness, there must of course be a sufficient relationship between the commercial success and the patented invention. The term "nexus" is often used, in this context, to designate a legally and factually sufficient connection between the proven success and the patented invention, such that the objective evidence should be considered in the determination of nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 7 USPQ 2d 1222 (Fed. Cir. 1988).

"However, a patentee need not show that all possible embodiments within the claims were successfully commercialized in order to rely on the success in the marketplace of the embodiment that was commercialized." *Applied Materials, Inc. v. Advanced Semiconductor Materials Am. Inc.*, 98 F.3d 1563, 40 USPQ 2d 1481, 1486 (Fed. Cir. 1996), petition for cert. denied, 117 S. Ct. 1822 (1997).

For example, in *Ex parte Anderson*, November 22, 2004 *Ex parte Anderson*, 21 USPQ 2d 1241 (B.P.A.I. 1991), the patentee in a reexamination proceeding presented affidavit evidence stating that a product embodying the claimed invention was commercially successful. The Board initially stated that "commercial success is relevant only if it flows from the merits of the claimed invention," *Id.* at 1258 (quoting *Sjolund v. Musland*, 847 F.2d 1573, 1582, 6 USPQ 2d 2020, 2028 (Fed. Cir. 1988)). In addition, the Board stated that "merely specifying sales figures alone is not sufficient to establish commercial success. Other evidence such as market share, growth in market share, replacement of earlier products sold by others, etc. need be present." (citing *Kansas Jack, Inc. v. Kuhn*, 719 F.2d 1144, 1151, 219 USPQ 857, 861 (Fed. Cir. 1983)).

The Board has consistently required this type of evidence in an affidavit for commercial success. *Ex parte GPAC Inc.*, 29 USPQ 2d 1401, 1407-08 (B.P.A.I. 1993), *aff'd*, 57 F.3d 1573, 35 USPQ 2d 1116 (Fed. Cir. 1995)

In re Metz, *In re Metz*, Civ. App. 97-1263 (Fed. Cir. Sept. 22, 1998) (unpublished), also emphasizes that there must be some connection between the commercial sales and the features of

the invention being claimed. The applicant argued that the invention was nonobvious in view of the widely successful commercial sales. However, the Federal Circuit was not persuaded that the commercial success was a result of the claimed invention. According to the Federal Circuit:

The sales figures appellant provided are essentially meaningless because they do not indicate the size of the market or the market share achieved. They merely demonstrate that Metz sold products and that the volume of those sales increased with time. This could be the result of a wide variety of factors which do not pertain to the merits of the claimed subject matter. Again, there must be some connection between the sales figures and claimed subject matter indicating what impact the claimed subject matter had on the sales volume. The purpose of secondary considerations is to elucidate the connection between the claimed subject matter and some element which alerts the reviewing party that the claimed subject matter may not have been obvious. Without a demonstrable connection, this point is lost. *Id.*, slip op. at 11-12.

Similarly, in *In re GPAC Inc.*, *In re GPAC Inc.*, 57 F.3d 1573, 35 USPQ 2d 1116, 1120 (Fed. Cir. 1995), the claimed invention, which related to a method for controlling airborne asbestos contamination during the course of asbestos removal from an existing building, was rejected as being obvious in view of 13 prior art references. The reexamination applicant, GPAC, argued that the invention was commercially successful because of extensive licenses in the industry. The Board refused to find such licenses persuasive as evidence of nonobviousness. According to the Board,

GPAC had not shown that the claimed invention was responsible for the licenses.

Therefore, the licences should include the claims to which they are referring to.

InPro-Mold & Toll Co. v. Great Lakes Plastics, Inc., Pro-Mold & Toll Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 37 USPQ 2d 1626 (Fed. Cir. 1996)., the Federal Circuit indicated that a patent owner's lack of previous experience in the relevant market combined with its high sales of the patented product provide an inference of a nexus between its commercial success and the patented invention, and are thus probative evidence of nonobviousness.

The Federal Circuit also emphasized that Pro-Mold's lack of previous experience in the relevant market combined with its high sales of the patented product provided an inference of a nexus between its commercial success and the patented invention and were thus probative evidence of nonobviousness. According to the Federal Circuit, Pro-Mold's "lack of market power in this field would seem to suggest that it was the features of the patented invention that led to the commercial success."

Thus, Pro-Mold, according to Irah Donner in Patent Prosecution, teaches that a patent owner's lack of previous experience in selling the invention together with its high sales of the patented invention may provide an inference of the required nexus between its commercial success and the patented invention. Similarly, the prominence of the patented technology in the infringer's advertising has also been held by the Federal Circuit to create an inference that links the claimed invention to its commercial success to show nonobviousness. Lundia AB v. Baxter Health Care Corp., 110 F.3d 1573, 42 USPQ 2d 1378, 1384 (Fed. Cir. 1997).

Industry recognition or award may also be probative of nonobviousness according to *Patent*

Prosecution. However, there must be some connection between the award and the features of the invention being claimed.

In *In re Huang*, *In re Huang*, 100 F.3d 135, 40 USPQ 2d 1685 (Fed. Cir. 1996), the Federal Circuit confirmed the nexus requirement during *ex parte* prosecution when The Federal Circuit stated: Although Huang's affidavit certainly indicates that many units have been sold, it provides no indication of whether this represents a substantial quantity in this market.

Therefore, again the importance of showing market share and the increase of the market share with regard to proving nexus is shown in *In re Huang* and other cases shown above according to Irah Donner's *Patent prosecution*, pages 561-568. Here in the Affidavit of commercial success, the increase of market share was presented along with many other factors enumerated above by the courts.

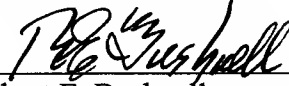
Therefore, according all the courts, the present invention has not only provided one criteria of a nexus of commercial success, but a plurality of them.

CONCLUSION

In view of the law and facts stated herein as well as all the foregoing reasons, Appellant believes that the rejection is improper and respectfully requests that the Board refuse to sustain

the outstanding rejection of claims 24-27, 32, 34, 35 and 37-55 under 35USC§112, 35 U.S.C.
102(b) and 35 U.S.C. 103(a).

Respectfully submitted,



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VIII. CLAIMS APPENDIX

CLAIMS UNDER APPEAL (24-27, 32, 34, 35 and 37-55)

1 24. (Previously Presented) A backpack, comprising of:
2 a back wall;
3 a hook connected to a top side of said back wall, said hook capable of hanging said back
4 wall to an object, external to said backpack;
5 a plurality of compartments on a front surface of said back wall, the plurality of
6 compartments including a front portion comprised of netted material accommodating a
7 circulation of air within said compartments, said compartments accommodating a plurality of
8 objects;
9 a pair of shoulder straps disposed a predetermined distance from each other along the
10 longitudinal side of the back surface of said back wall to accommodate a carrying of said
11 backpack by the shoulders and the back of a user; and
12 wherein said backpack is secured by a fastening unit after said backpack is folded to a
13 closed position.

1 25. (Previously Presented) The backpack of claim 24, further comprising a first side wall
2 and a second side wall attached to a first and second side of said back wall respectively, the first
3 and second side walls disposed on opposite sides of said back wall, said first and second side

walls being fastened to the sides of a top portion of said back wall when said back wall is folded.

26. (Previously Presented) The backpack of claim 25, further comprised of a bottom panel attached at an angle to said backwall, and to said first and second sidewalls.

27. (Previously Presented) The backpack of claim 26, wherein when said back wall is folded, a portion of said back wall having the shoulder straps that is folded is substantially flat.

32. (Previously Presented) The backpack of claim 26, further comprising means for accommodating the hanging of hangers for clothes on the top portion of the front side of said back wall.

34. (Previously Presented) The backpack of claim 24, further comprising at least one strap securing an object to said backpack.

35. (Previously Presented) A backpack, comprising:
a back wall;
a left wall and right wall extending from at least a portion of said back wall;
a bottom portion attached to a bottom of said back wall and said bottom portion connecting between a bottom of said right wall and said left wall;
a first wall extending from said bottom portion and assisting in holding a sufficient

7 portion of said left and right walls together forming a bottom compartment;

8 a plurality of compartments on a front surface of said back wall, said plurality of
9 compartments comprising a front portion comprising of at least a partially see-through material
10 accommodating a circulation of air within said compartments, said compartments
11 accommodating a plurality of objects, said plurality of compartments being disposed on a single
12 plane accommodating full accessibility and a view of the objects within said plurality of
13 compartments when said backpack is in an open position, said back wall folding to close said
14 backpack, said compartments disposed from a top portion of the front surface of said back wall
15 to a bottom portion of said back wall; and

16 at least one back strap on an external surface of said backpack to accommodate shoulder
17 and back transport of said backpack, on a user.

1 37. (Previously Presented) The backpack of claim 35, further comprising a first unit
2 connected to a top side of said back wall, said first unit capable of hanging said back wall in the
3 single plane to an external object.

1 38. (Previously Presented) The backpack of claim 37, further comprising a strap
2 accommodating the hanging of garments along a length of said back wall.

1 39. (Previously Presented) A backpack, comprising:
2 a back member having a top, bottom and two sides;

3 curved side members affixed to a portion of each of said two sides of said back member;
4 a bottom member connected to said bottom of said back member and a bottom of each of
5 said curved side members, said bottom member extending from a front side of said back
6 member;
7 a zipper positioned on said top of said back member, a portion of each side of said back
8 member on said curved side members and said bottom member for selectively connecting and
9 disconnecting said top and sides of said back member to said curved side members and said
10 bottom member; and wherein said back wall folds to form a front panel of a backpack
11 configuration, when fastened shut, a plurality of compartments formed on a front side of said
12 back member at spaced apart locations, said compartments being within an internal volume when
13 said zipper connects said top and sides of said back member to said curved side member, and
14 said bottom member, said back member forming a single plane when in an opened position to
15 accommodate an access and view of objects within said plurality of compartments; and
16 backpack straps positioned on a back side of said back member of said backpack.

1 40. (Previously Presented) The backpack of claim 39, further comprising a hook
2 connected to said back member for hanging said backpack when said backpack is unzipped.

1 41. (Previously Presented) The backpack of claim 27, with said back wall being folded
2 by the top portion of said back wall being folded only frontally downwards towards the front
3 portion of said bottom panel accommodating the fastening of one end of said back wall to the

4 other end when said back wall is folded, and accommodating said first and second side walls
5 extending from the bottom portion of said back wall being fastened to the sides of the top portion
6 of said back wall when said back wall is folded, with the downward direction being parallel with
7 the longitudinal direction of said shoulder straps along the longitudinal side of the back surface
8 of said back wall, and with a zipper fastening and closing said backwall with said bottom panel
9 not being at a lower portion of the back surface of said backwall having said shoulder straps.

1 42. (Previously Presented) The backpack of claim 27, further comprising a front wall
2 formed at the front edge of the bottom panel of said backpack and assisting in holding said first
3 and second side walls together to form a bottom cavity for holding objects at the bottom.

1 43. (Previously Presented) The backpack of claim 38, with said back wall folding to
2 close said bag by folding the top portion of said back wall to the front edge of a bottom portion
3 of said back wall to couple with said bottom portion formed from a bottom of said backwall, said
4 left wall and said right wall extending from the bottom portion of said back wall and upwards
5 from said bottom of said backwall forming a bottom of said backpack.

1 44. (Previously Presented) The backpack of claim 40, with said back member selectively
2 connecting and disconnecting said back member to said curved side members and the front of
3 said bottom member by folding said back member frontally downwards toward the bottom
4 member to fasten and close said backpack and unfastening said backpack to unfold said back

5 member upwards to a hanging position.

1 45. (Previously Presented) The backpack of claim 41, with a length of said first and
2 second side walls being greater than a width of said back wall.

1 46. (Previously Presented) A backpack, comprising:
2 a back wall including a top portion and lower portion;
3 a left wall and right wall extending along said lower portion of a left side and a right side
4 of said back wall, respectively;
5 a bottom member formed from a bottom of said back wall and connecting a bottom of
6 said right wall to said left wall;
7 a first wall extending from said bottom member and assisting in holding at least a portion
8 of said left and right walls together to form a chamber;
9 a plurality of compartments on a front surface of said back wall, said plurality of
10 compartments comprising a front portion comprising of at least a partially see-through material
11 accommodating a circulation of air within said compartments, said compartments
12 accommodating a plurality of objects, said plurality of compartments being disposed on a single
13 substantially flat plane accommodating full accessibility and a view of the objects within said
14 plurality of compartments when in an open position, said back wall folding to close said
15 backpack, said compartments disposed from a top portion of the front surface of said back wall
16 to a bottom member of said back wall covering a substantial portion of the front portion of said

backwall, said backwall being separate from the other walls;

a zipper positioned on said top portion of said back wall and around said side walls and first wall accommodating selectively connecting and disconnecting said top and sides of said back wall to said side walls and said first wall, said back wall folds to form a front panel of a backpack configuration, when fastened shut, said compartments being within an internal volume when said zipper connects said top and sides of said back wall to said side walls and said first wall; and

a pair of straps disposed on the back surface of said lower portion of said back wall to accommodate a transport of said backpack on a back of a user through both shoulders of a user for each strap, said pair of straps disposed a predetermined distance from each other along the longitudinal side of the back surface of said lower portion of said back wall to accommodate a carrying of said backpack by the shoulders and the back of a user, said back portion of said lower portion of said back wall having only said pair of straps and being substantially flat when said backpack is closed, said backwall, sidewalls, first wall and bottom member being made of a flexible material.

47. (Previously Presented) The backpack of claim 46, further comprising a hook connected to a top side of said back wall, said hook accommodating hanging said back wall in the single plane to an external object.

48. (Previously Presented) The backpack of claim 47, further comprising a first unit

2 accommodating the hanging of garments along a length of said back wall.

1 49. (Previously Presented) The backpack of claim 48, further comprised of said
2 compartments including straps integrated at only the top side of the compartments securing
3 objects within the compartments.

1 50. (Previously Presented) The backpack of claim 49, with the compartments having
2 clasps to further secure the compartments from the top side of the compartments.

1 51. (Previously Presented) The backpack of claim 50, with the compartment at the
2 bottom member formed by the side walls and first wall of a certain height accommodating the
3 securing of external objects within said compartment.

1 52. (Previously Presented) The backpack of claim 51, further comprised of said first wall
2 being of a netted material accommodating ventilation and securing external objects.

1 53. (Previously Presented) The backpack of claim 52, with said side walls extending
2 from each side of said bottom member, where said bottom member having a greater width than
3 the top portion of said backwall.

1 54. (Previously Presented) A backpack, comprising:

2 a back member having a top, bottom and two sides;
3 curved side members affixed to each of said two sides of said back member and
4 extending from a front side of said back member;
5 a bottom member connected to said bottom of said back member and each of said curved
6 side members, said bottom member extending from said front side of said back member, said
7 back member, said curved side members and said bottom member defining an internal volume;
8 a zipper positioned on said top of said back member and on said curved side members
9 and said bottom member for selectively connecting and disconnecting said top of said back
10 member to said curved side members and said bottom member;
11 a plurality of compartments formed on a front side of said back member at spaced apart
12 locations, said compartments being within said internal volume when said zipper connects said
13 top of said back member to said curved side member, said back member forming a single flat
14 plane when in an opened position to accommodate an access and view of objects within said
15 plurality of compartments included on an entire surface of said single plane, said compartments
16 included on a substantial portion of said top and bottom of said back member; and
17 backpack straps positioned on a back side of the bottom of said back member forming the
18 single flat non-rigid plane on said back side of said back member when said backpack is open or
19 closed.

1 55. (Previously Presented) The backpack of claim 54, further comprising a hook
2 connected to said back member for hanging said back member to an external structure when said

zipper is selectively disconnected with said top of said back member from said curved side members and said bottom member.

IX. EVIDENCE APPENDIX

References cited by both Applicant and the Examiner

1. U.S. Patent No. 6,193,034 to Fournier, issued on 27 February 2001.⁹
2. U.S. Patent No. 6,334,519 to Tong, issued on 1 January 2002.¹⁰
3. U.S. Patent No. 6,196,718 to DeChant, issued on 6 March 2001.¹¹
4. U.S. Patent No. 6,286,461 to Martz, issued on 11 September 2001.¹²

⁹ Information Disclosure Statement filed on 29 November 2001 and Office action (Paper No. 8) mailed on 30 December 2002

¹⁰ Office action (Paper No. 8) mailed on 30 December 2002

¹¹ Office action (Paper No. 8) mailed on 30 December 2002

¹² Office action (Paper No. 8) mailed on 30 December 2002

5. U.S. Patent No. 140,548 to Scott, issued on 1 July 1873.¹³
6. U.S. Patent No. 2,205,205 to King, issued on 18 June 1940.¹⁴
7. U.S. Patent No. 4,901,897 to Briggs et al., issued on 20 February 1990.¹⁵
8. U.S. Patent No. 2,626,689 to Davis et al., issue on 27 January 1953.¹⁶
9. U.S. Patent No. 6,386,414 to Kilduff, issued on 14 May 2002.¹⁷
10. U.S. Patent No. 5,575,362 to Franklin et al., issued on 19 November 1996.¹⁸
11. U.S. Patent No. 5,749,503 to Wulf et al., issued on 12 May 1998.¹⁹

¹³ Office action (Paper No. 8) mailed on 30 December 2002

¹⁴ Office action (Paper No. 8) mailed on 30 December 2002

¹⁵ Information Disclosure Statement filed on 29 November 2001 and final Office action (Paper No. 12) mailed on 25 July 2003

¹⁶ Final Office action (Paper No. 12) mailed on 25 July 2003

¹⁷ Final Office action (Paper No. 12) mailed on 25 July 2003 and Office action (Paper No. 20040719) mailed on 21 July 2004

¹⁸ Office action (Paper No. 20040719) mailed on 21 July 2004

¹⁹ Office action (Paper No. 20040719) mailed on 21 July 2004

12. U.S. Patent No. 5,054,589 to Bomes et al., issued on 8 October 1991.²⁰
13. U.S. Patent No. 6,129,254 to Yu, issued on 10 October 2000.²¹

Evidences of Commercial Success provided by Applicant

14. Evidence of Commercial Success, filed on 21 November 2003.²²
15. Evidence of Commercial Success, filed on 23 December 2004.²³

X. RELATED PROCEEDINGS APPENDIX

None.

²⁰ Office action (Paper No. 20040719) mailed on 21 July 2004

²¹ Office action (Paper No. 8) mailed on 30 December 2002 and final Office action (Paper No. 20050207) mailed on 11 February 2005

²² Office action (Paper No. 20040719) mailed on 21 July 2004

²³ final Office action (Paper No. 20050207) mailed on 11 February 2005